PETITION AND TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 76

THE UNITED STATES, PETITIONER

vs.

AMOS P. CARVER, A. E. TURNER, CLIFFORD E. CARVER, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

PETITION FOR CERTIORARI FILED SEPTEMBER 16, 1926.
CERTIORARI GRANTED APRIL 25, 1927.

(26250)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 807

THE UNITED STATES, PETITIONER

vs.

AMOS D. CARVER, S. E. TURNER, CLIFFORD N. CARVER, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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1 In the Supreme Court of the United States

October term, 1927

No. ——

THE UNITED STATES, PETITIONER

v.

AMOS D. CARVER, S. E. TURNER, CLIFFORD N. CARVER, SCOTT BLANCHARD, P. B. Blanchard, James B. Parse, A. N. Blanchard, W. A. Blanchard

Petition for a writ of certiorari to the Court of Claims

The Solicitor General on behalf of the United States prays that a writ of certiorari issue to review the judgment of the Court of Claims entered December 19, 1927, in the amount of $113,216.00, with interest at 6% from May 9, 1918, until paid, which judgment amended a previous judgment and overruled a motion by the United States for a new trial and for additional findings.

STATEMENT

By an original and amended petition, the owners of the
2 sailing vessel "Betsy Ross" made claim that the United States Shipping Board, as agent for the President, during April or May, 1918, requisitioned the use of that vessel, then in the port of Melbourne, Australia, for carrying wheat to the United States and sought compensation by reason "of being deprived of the use of said ship." While building, her owners late in 1917 entered upon a charter party for carrying lumber from British Columbia to Melbourne, Australia, and simultaneously entered into a charter party for carrying a return cargo of chrome ore from the island of New Caledonia, 800 miles east of Australia, to Baltimore. The amount petitioners would have earned under the ore charter was $177,000.00. Following administrative regulations, both charter parties had the approval of the Shipping Board. Upon completing the lumber charter and after making repairs, the master applied to the Australian authorities for clearance, which was declined at the request of the Shipping Board, which had under consideration the carriage of wheat for the Food Administration from Australia to New York. Owners took up with representatives of the Shipping Board and the War Industries Board here the performance of the ore charter. These representatives concluded that wheat was a more important commodity and advised the owners to make arrange-
ments with the Food Administration for wheat; otherwise the
3 "Betsy Ross" would be requisitioned. Owners concluded, rather than have the vessel requisitioned, to carry wheat and

accordingly entered upon a charter party with the Food Administration, which was performed and the freight moneys there provided paid. The freight agreed upon therein was $63,784.00. The use of the "Betsy Ross" was not requisitioned by the Government. (Findings X, infra.)

However, the court determined that the act of June 15, 1917 (c. 29, 40 Stat. 182), conferred upon the President the power and authority to suspend and cancel contracts with respect to the operation of ships and provided compensation. They read the action of the Government in this case to be a cancellation or suspension of the ore charter within the meaning of that act and awarded compensation.

The pertinent provisions of the act are:

"The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

* * * * * * *

"(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

* * * * * * *

"(c) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

* * * * * * *

4 "Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code."

By appropriate Executive orders, the President delegated to the Emergency Fleet Corporation the powers and authority applicable to the construction of vessels, the purchase or requisition of vessels in the course of construction, or of contracts for construction of such vessels and the completion thereof, and to the Shipping Board the power and authority with respect to taking over of title or possession of constructed vessels or charters, to be exercised either directly by the board or through the Fleet Corporation. Clearly, the act in so

far as it provides for cancelling or suspending contracts relates, under clause (b), to contracts for the building, production, or purchase of ships or material. There was no requisition of the ore charter under clause (e). In fact, the Government did not take the use of the vessel under requisition. Rather than permit requisition, her owners entered upon the wheat charter. This prevented the performance of the ore charter. No reference to these charters is made by the petitions filed in the case.

ASSIGNMENTS OF ERROR

1. The Court of Claims erred in holding that there was a suspension or cancellation of the charter with the Mutual Chemical Company of America within the provisions of the act of June 15, 1917, and that compensation by reason of such suspension or cancellation follows.

2. The Court of Claims erred in granting judgment to the respondent.

REASONS FOR GRANTING THE WRIT

1. The ruling is in direct conflict with the accepted decisions of this court in the following cases: Omnia Company v. United States, 261 U. S. 502; Berg v. United States, 269 U. S. 535; American Smelting and Refining Company v. United States, 259 U. S. 75; and with Friend v. United States, 56 Ct. Cls. 423; Union Petroleum S. S. Co. v. United States (C. C. A. 2d Cir.), 18 F. (2d) 752 (certiorari denied, 274 U. S. 760).

2. A plain error has been committed by the Court of Claims in construing and applying the act of June 15, 1917. The application made of this statute is contrary to the general rulings adopted by the Government in the adjustment of many requisition claims for which liability always has been denied.

These considerations have impelled us to submit the case to the court for the exercise of its judicial discretion under rule 35 whether the writ should be issued or denied. Obviously, the rulings of the Court of Claims are erroneous. Although similar claims are not now in litigation, the Government has uniformly rejected large numbers of similar claims. The judgment in this case is for $113,216.66 with interest at 6% per annum from May 9, 1918, totaling nearly $180,000.00. Although the case may be of no general importance, we do not feel justified in acquiescing in a judgment for that amount, which appears to be without anything to support it.

Respectfully submitted.

WILLIAM D MITCHELL,
Solicitor General.

FEBRUARY, 1928.

7 In Court Claims of the United States

No. C–459

AMOS D. CARVER, S. E. TURNER, CLIFFORD N. CARVER, SCOTT Blanchard, P. B. Blanchard, James B. Parse, A. N. Blanchard, W. A. Blanchard

vs.

THE UNITED STATES

I. *History of proceedings*

On April 25, 1923, the original petition was filed by Messrs. Dean & Scott, attorneys of record, in the name of Amos D. Carver.

On June 25, 1923, a general traverse was entered under rule 34.

On March 19, 1924, on motion made therefor, Frank E. Scott, Esq., was substituted as attorney of record.

On March 18, 1925, by leave of court, the plaintiffs filed their amended petition. Said amended petition is as follows:

II. *Amended petition*

Filed March 18, 1925

To the honorable CHIEF JUSTICE and the JUDGES OF THE UNITED STATES COURT OF CLAIMS:

The plaintiffs, by their attorneys, for their petition herein, respectfully show to the court:

I

The petitioner, Amos D. Carver, at all times hereinafter mentioned was the managing owner of a certain ship or vessel called the "Betsy Ross," classed as 100 A–1, of the measurement of approximately 2,950 tons deadweight cargo capacity, and the ownership of said vessel was vested in the above-named plaintiffs in the following proportions: Amos D. Carver, $\frac{12}{64}$; S. E. Turner, $\frac{12}{64}$; Clifford N. Carver, $\frac{11}{64}$; A. N. Blanchard, $\frac{11}{64}$; W. A. Blanchard, $\frac{5}{64}$; Scott Blanchard, $\frac{5}{64}$; P. B. Blanchard, $\frac{5}{64}$; James B. Parse, $\frac{3}{64}$.

8 II

By Public Act No. 23 of the 65th Congress, entitled "An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved June 15, 1917, it was provided that:

"The President is hereby authorized and empowered, within the limits of the amounts herein authorized:

* * * * * * *

"(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production or purchase of ships or material.

* * * * * * *

"(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction, or hereafter constructed, or any part thereof, or charter of such ship."

Said act also provides:

"Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the Presi-
9 dent; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code."

* * * * * * *

"The President may exercise the power and authority hereby vested in him, and expend the money herein and hereinafter appropriated, through such agency or agencies as he shall determine from time to time."

* * * * * * *

"The word 'person' as used herein shall include any individual, trustee, firm, association, company, corporation, or contractor. The word 'ship' shall include any boat, vessel, or submarine and the parts thereof."

III

Under authority of and pursuant to the provisions of said act of June 15, 1917, the President of the United States, on July 11, 1917, issued the following Executive order:

"By virtue of authority vested in me in the section entitled 'Emergency shipping fund' of an act of Congress entitled 'An act
10 making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes,' approved

June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

"And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation, management and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may in the discretion of said Board, be exercised directly by the said Board or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

"WOODROW WILSON.

THE WHITE HOUSE, *11 July, 1917.*"

11

IV

On or about April 5, 1918, when said ship "Betsy Ross" was in the port of Melbourne, Australia, the said United States Shipping Board, or its duly authorized agents, on behalf of the Government, made use of, assumed, occupied, requisitioned, acquired, or took over said ship for use of the United States Grain Corporation (a Government agency organized, owned, and conducted by the United States, pursuant to the laws of Congress and Executive orders of the President) in the transportation of wheat from Australia to the United States, and said vessel was made use of, assumed, occupied, requisitioned, acquired, or taken over from the service and business of the plaintiffs by the officers and agents of the defendant.

The plaintiffs disbursed for the account of the defendants at their instance and request canal tolls at the Panama Canal, for the passage of said cargo of wheat, the sum of $2,185.60, no part of which has been returned to the plaintiffs, although duly demanded.

V

The compensation and reimbursement to which the plaintiffs are justly entitled by reason of being deprived of the use of said ship, as stated above, is the sum of $212,974.96, of which the plaintiffs had been paid only the sum of $63,784.00, leaving a balance due and owing to the plaintiffs of $148,290.96, with interest.

12

VI

The petitioners further say that they have duly presented the above claim for adjustment by the President as provided in said act of Congress, but same has not been allowed or paid. No transfer or assignment of this claim has been made, and claimants are justly entitled to the amount herein claimed to be due, after allowing all just offsets and credits.

The claimants have at all times been loyal citizens of the United States, and have in no way voluntarily aided, abetted, or given encouragement to rebellion against the United States.

VII

By reason of the premises there is now due and owing by the United States to the petitioners the said sum of $148,280.96, with interest.

Wherefore the petitioners pray judgment against the defendants for $148,280.96, with interest, and for such other and further relief in the premises as may be just.

AMOS D. CARVER.
S. E. TURNER.
CLIFFORD N. CARVER.
SCOTT BLANCHARD.
P. B. BLANCHARD.
JAMES B. PARSE.
A. N. BLANCHARD.
W. A. BLANCHARD.

13 [*Duly sworn to by Frank E. Scott; jurat omitted in printing.*]

14 III. *General traverse.*

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises having been entered on the part of the defendant, a general traverse is entered as provided by rule 34.

IV. *Argument and submission.*

On October 26, 1926, this case was argued and submitted on merits by Mr. Frank E. Scott, for the plaintiffs, and by Mr. J. Frank Staley, for the defendant.

15 V. *Special findings of fact, conclusion of law, and opinion of the court by Hay, J.*

Filed January 17, 1927

This case having been heard by the Court of Claims upon the evidence and the report of the commissioner, the court makes the following

Special findings of fact

I

Plaintiffs are citizens of the United States and have at all times borne true allegiance to said Government and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the United States. Amos D. Carver, one of the plaintiffs, was during the transactions hereinafter described the managing owner of a certain ship, called the "Betsey Ross," and the ownership of said vessel during said time was vested in the plaintiffs in the following proportions:

Amos D. Carver, $\frac{1}{2}$; H. N. Blanchard, $\frac{12}{64}$; S. E. Turner, $\frac{12}{64}$; Clifford N. Carver, $\frac{14}{64}$; James B. Parse, $\frac{4}{64}$; W. A. Blanchard, $\frac{4}{64}$; Scott Blanchard, $\frac{4}{64}$; and P. B. Blanchard, $\frac{4}{64}$. Said vessel was a five-masted sailing ship classed as 100–A–1, by British Lloyds Registry, and was of the measurement of 2423 feet in length, 44.9 feet in width, and 19.7 feet in depth. Said vessel was built for plaintiffs by the Seaborn Shipbuilding Company at Tacoma, Washington, between the approximate dates of March 19, 1917, and October 8, 1917, at a cost to said plaintiffs of $176,000. Her net tonnage was 1,503, her gross tonnage 1,670, and her dead-weight cargo capacity was approximately 2,950 tons.

II

On August 30, 1917, plaintiffs entered into charter party with Messrs. J. J. Moore & Company, of San Francisco, California, for the transportation of a cargo of lumber from Chemainus, British Columbia, Dominion of Canada, to Melbourne, Australia, at the charter rate of $59 for each 1,000 feet, board measure. One of the conditions of said charter was as follows:

"This charter is subject to charter for return cargo being signed in New York, promptly after advice that this charter has been signed here."

Simultaneously with said lumber charter, plaintiffs entered into a charter party with the Mutual Chemical Company of America at New York which provided that said vessel on her return voyage should transport a cargo of chrome ore from the Island of New Caledonia (800 miles east of Australia) to New York or Baltimore, at the rate of $9.50 United States currency per ton of 2,240 pounds.

III

Under the provisions of the act of June 15, 1917, the President, by Executive order of July 11, 1917, delegated to the United States Shipping Board all power and authority vested in him by said act, which act included the power to cancel, suspend, or requisition any contract pertaining to the construction or operation of ships.

IV

On November 26, 1917, about the time of the departure of said vessel upon her outward voyage, plaintiffs, through their agents, Messrs. D. B. Dearborn & Company, steamship brokers, New York City, applied to the United States Shipping Board for the approval of said voyage of the "Betsey Ross," and obtained said approval, as follows:

Address all communications to United States Shipping Board chartering committee, customhouse, New York

UNITED STATES SHIPPING BOARD CHARTERING COMMITTEE,
New York, November 26, 1917.

Messrs. D. B. DEARBORN & Co.,
8 Bridge Street, N. Y.

American schooner "Betsey Ross."

DEAR SIRS: We have your letter of November 26th in connection with charter of above vessel for a cargo of ore from New Caledonia to New York or Baltimore.

This charter is hereby approved.

Yours very truly,

(Sgd.) WILDING RING,
Chairman of the Chartering Committee.

V

Thereupon said vessel proceeded on her voyage and prior to and during said outward voyage plaintiffs built "trunks" in said ship for the return cargo of chrome ore at a cost to plaintiffs of $5,889.35. Said lumber shipped for trunks for the carriage of chrome ore was used as dunnage for the carriage of a wheat cargo on her return voyage.

VI

Said vessel completed her outward voyage, arriving in the port of Melbourne on March 9, 1918. Between March 9, 1918, and March 27, 1918, said ship was discharged of her cargo of lumber. Between March 27, 1918, and April 3, 1918, said vessel was cleaned and
17 painted, and on April 5, 1918, she was undocked and on April 10, 1918, she was ready to sail for New Caledonia. However, before she sailed the vessel's steering gear broke down, which occupied four days in her repairs.

VII

On or about April 5, 1918, certain officials of the United States Shipping Board, and the United States War Industries Board, and of the British and Australian Governments, entered upon the dis-

cussion of requiring or requesting American-owned vessels, including the "Betsey Ross," to return to an American port with cargoes of wheat. There were differences of opinion between the said various officials as to what action should be taken, which discussion continued until May 9, 1918.

VIII

The master of the "Betsey Ross" applied to the authorities at Melbourne, on April 5, 1918, for clearance papers. The commonwealth authorities declined to grant clearance, advising plaintiffs' agent at Melbourne that this action was taken at the request of the United States Shipping Board. On April 15th the plaintiffs' agent at Melbourne rendered bills to the Commonwealth Shipping Board for demurrage on the vessel due to the embargo placed against her, but these bills were disallowed and returned with the following letter on April 17th:

COMMONWEALTH OF AUSTRALIA,
COMMONWEALTH SHIPPING BOARD,
LIVERPOOL BUILDING, 135 WILLIAM STREET,
Melbourne, 17th April, 1918.

No. 5625. S. S. "Betsey Ross"

DEAR SIRS: Referring to your letter of the 15th inst., enclosing debit notes for demurrage in connection with above vessel; these are returned herewith, for, as previously advised, no responsibility can be accepted in regard to the matter.

I am instructed to inform you for the information of the master, that the following cable has been received from the Secretary of State, dated 15th April:

"With reference to your telegram of 12th April, American Shipping Board consider 'Betsey Ross' suitable wheat and requests she loads wheat not chrome ore."

Doubtless the master will receive instructions in regard to this vessel.

Yours faithfully,

(Sgd.) W. HEALE, *Secretary.*

MESSRS. WM. HAUGHTON & CO., *Melbourne.*

IX

Pending the continuance of the said embargo the owners of the "Betsey Ross" made various efforts to have the vessel cleared
18 in order that she might carry out her chrome-ore charter, but action on these requests was delayed until May 9, 1918, pending a decision being reached by the United States Shipping Board that the vessel would be ordered to abandon her chrome-ore charter and return to the United States with a cargo of wheat. The

said vessel in the meantime remained idle at Melbourne pending these negotiations from April 10, 1918, to May 10, 1918, a period of 30 days, at the expense of the plaintiffs. The fair and reasonable value of the use of said vessel as of that time was $500 per day.

X

Shortly after plaintiffs were so notified by said Australian officials, and on or about May 15, 1918, the United States Food Administration Grain Corporation, at its office in New York, submitted to the managing owner of said vessel the so-called "Australian Government Form Wheat Charter," which was thereupon signed on behalf of plaintiffs and by said Grain Corporation.

Said charter contained the following provisions:

"New York, *May 15, 1918.*

"It is this day mutually agreed between Food Administration Grain Corporation, hereinafter called the charterers, of the one part, and Amos D. Carver for and on behalf of the owners of the good ship or vessel called the 'Betsey Ross,' classed 100 A-1, of the measurement of ..... tons net register, or thereabouts, and 2,750 tons deadweight cargo capacity 10% more or less, now Melbourne, whereof ..... is master, of the other part.

"That the said ship being tight, staunch, strong, and every way fitted for the intended voyage, shall load at Melbourne * * * a full and complete cargo of wheat and or flour in bags, which the said charterers bind themselves to provide, not exceeding what she can reasonably stow and carry over her tackle, apparel, provisions, and furniture, and being so loaded, shall forthwith proceed as ordered by charterers on signing bills of lading, to New York * * *.

"Freight being payable in sterling at and after at the rate of: (125.....) One hundred and twenty five shillings. All per ton of 2240 lbs. net weight, delivered, for wheat and or flour. Ninety per cent of the said freight to be paid on cable advice of having loaded and sailed, the balance, less advances, if any, to be paid on unloading and right delivery of the cargo, in cash at fixed rate of exchange of $4.76 per one pound sterling. Freight prepaid considered earned and not returnable ship and or cargo lost or not lost. * * *

"Ten (10) working days are to be allowed the said charterers or their agents (if the ship is not sooner dispatched) for loading the said ship at port of loading (Sundays and holidays excepted), to be reckoned from twenty-four hours after the master has given written notice to the charterers or their agents in business hours, that the ship is ready to receive cargo (the inward cargo or ballast then being all discharged and subject to clause 14), and the ship to be discharged with all dispatch as customary at the port of discharge.

The said charterers or their agents to have the option of keeping the said ship ten days on demurrage, at 1/— per net register ton per day for every day detained beyond the total number of lay days; such demurrage to be payable day by day when and where incurred. * * *

"It is also mutually agreed that this charter is subject to all the terms and provisions of and all the exemptions from liability contained in the act of Congress of the United States approved on the 13th day of February, 1893, and entitled an 'Act relating to navigation of vessels, etc.'"

At the time of or immediately prior to the signing of said wheat charter plaintiffs, as a result of their negotiations with the United States Food Administration, concluded that rather than have the United States Government take over the "Betsey Ross" said plaintiffs had better sign said wheat charter. This they did on May 15, 1918.

XI

The United States Food Administration paid plaintiffs for the transportation of said cargo of wheat $63,784, the same being upon the basis of the cargo of 2,144 tons at 125 shillings per ton and $4.76 per pound sterling as provided in said wheat charter. Said sum so paid did not include any sums as payments for disbursements or demurrage. The amount which plaintiffs would have earned under the terms of their ore charter of August 20, 1917, would have been $177,000.

XII

The "Betsey Ross" upon her return voyage arrived in New York about the time of the armistice, 1918. The claim herein sued upon was presented to the United States Shipping Board for an award of just compensation, and on or about February 17, 1920, said Shipping Board made an award disallowing said claim and any part thereof.

XIII

Just compensation to the plaintiffs for the cancellation of their contract with the Mutual Chemical Company of America is the sum of $113,216, with interest at the rate of 6 per cent per annum from May 9, 1918, until paid.

Conclusion of law

Upon the foregoing special findings of fact, which are made a part of this judgment, the court decides as a conclusion of law that the plaintiffs are entitled to recover the sum of $113,216, with interest thereon at 6 per cent per annum from May 9, 1918, until paid.

It is, therefore, adjudged and ordered that the plaintiffs recover of and from the United States the sum of one hundred thirteen thousand, two hundred and sixteen dollars ($113,216), with interest thereon at 6 per cent per annum from May 9, 1918, until paid.

Opinion

HAY, Judge, delivered the opinion of the court:

This is a suit brought by the plaintiffs against the United States to recover three items: $15,000, $5,889.35 and $113,216, making in the aggregate the sum of $134,105.35.

90 The plaintiffs, citizens of the United States, were at the times hereinafter mentioned the owners of a ship called the "Betsey Ross." On August 30, 1917, the plaintiffs entered into a charter party with J. J. Moore & Company, of San Francisco, for the transportation of a cargo of lumber from Chemainus, British Columbia, to Melbourne, Australia. One of the conditions of said charter party was as follows: "This charter is subject to charter for return cargo being signed in New York promptly after advice that this charter has been signed here."

Simultaneously with said lumber charter plaintiffs entered into a charter party with the Mutual Chemical Company of America at New York which provided that said ship on her return voyage should transport a cargo of chrome ore from the Island of New Caledonia, 800 miles east of Australia, to New York or Baltimore at the rate of $60 per ton of 2,240 pounds.

On November 26, 1917, about the time of the departure of said ship upon her outward voyage, the plaintiffs through their agents applied to the United States Shipping Board for the approval of the charter for the return voyage of said ship, and received approval as follows:

NEW YORK, *November 26, 1917.*

MESSRS. D. B. DEARBORN & CO.,
8 Bridge Street, N. Y.

American schooner "Betsey Ross."

DEAR SIRS: We have your letter of November 26th in connection with charter of above vessel for a cargo of ore from New Caledonia to New York or Baltimore.

This charter is hereby approved.

Yours very truly,

(Sgd.) WELDING RUSS,
Chairman of the Chartering Committee.

The "Betsey Ross" completed her outward voyage and arrived at the port of Melbourne on March 9, 1918. On April 10, 1918, the ship was ready to sail for New Caledonia to load her cargo of chrome ore.

On April 5, 1918, the United States Shipping Board, the United States War Industries Board, and the British and Australian Government entered upon a discussion as to the desirability of requiring American owned vessels in Australian ports to return to an American port with cargoes of wheat, but no decision was arrived at until May 9, 1918.

In the meantime the master of the "Betsey Ross" was refused clearance papers from the port of Melbourne upon the ground that the United States had requested that the "Betsey Ross" should

make her return voyage with a cargo of wheat instead of chrome ore, and it was not until May 9, 1918, that the master of the vessel was advised that he was required to load a cargo of wheat.

The plaintiffs were also notified, and their contract with the Mutual Chemical Company of America was rendered impossible of performance. On May 15, 1918, having had submitted to them by the United States Food Administration Grain Corporation the so-called "Australian Government form wheat charter," they signed said charter dated May 15, 1918. Under the provisions of said charter
21 plaintiffs were to be paid for the transportation of wheat at the rate of 125 shillings per ton of 2,240 pounds. The ship after clearing from Melbourne docked at William-town in the vicinity of Melbourne, and on May 29, 1918, the "Betsey Ross" sailed from Williamstown for New York with the cargo of wheat, 2,144 tons.

After the ship arrived at New York the plaintiffs were paid for the transportation of said cargo of wheat the sum of $63,784, the same being in full payment under the provisions of the contract.

Had the plaintiffs been permitted to perform their contract with the Mutual Chemical Company of America they would have earned the sum of $177,000.

The ship was idle 30 days in the port of Melbourne by reason of the fact that the United States Shipping Board requested that she be held until it could make up its mind whether the ship should make her return voyage loaded with wheat or chrome ore.

The claim which is sued upon here was presented to the United States Shipping Board for an award of just compensation, and on February 17, 1920, the said board made an award disallowing the claim.

The act of June 15, 1917, 40 Stat. 182, confers upon the President the power and authority to suspend and cancel contracts with respect to the operation of ships. The President delegated this power to the United States Shipping Board Emergency Fleet Corporation as he was authorized to do under the act. The act further provides that when contracts are suspended or canceled the United States shall make just compensation therefor to be determined by the President, and if the amount thereof so determined by him is unsatisfactory to the person entitled to receive it such person shall be paid 75 per cent of the amount so determined, and shall be entitled to sue the United States to recover such further sum as added to said 75 per cent will make up such amount as will be just compensation therefor, and the act conferred upon this court jurisdiction to hear and determine such cases.

In the case at bar the plaintiffs made their claim for just compensation to the United States Shipping Board Emergency Fleet Corporation which board on February 17, 1920, disallowed the claim, whereupon the plaintiffs brought this suit.

The facts are that the United States Shipping Board suspended the contract of the plaintiffs for a period of 30 days while the said

board was deliberating the question whether the ship of the plaintiffs and all other American ships in the ports of Australia should or should not on their return voyage to the United States be loaded with cargoes of wheat; and the plaintiffs' ship by reason of these deliberations was forced to remain idle in the port of Melbourne, Australia, for the period of 30 days.

At the expiration of the said 30 days, on May 9, 1918, the plaintiffs were required by the United States Shipping Board Emergency Fleet Corporation to take on a cargo of wheat for its return voyage to the United States, and by this act the said board canceled the contract which the plaintiffs had with the Mutual Chemical Company of America to transport a cargo of chrome ore from the Island of New Caledonia to New York or Baltimore.

It is not denied that the contract under consideration is within the provisions of the act June 15, 1917, and that the power and
22 authority of the President in relation thereto was duly delegated to the United States Shipping Board Emergency Fleet Corporation.

The act provides for compensation in case the Government shall exercise the power conferred as to suspending and canceling contracts. Having the right to suspend and cancel the contract, it must be held that the Government must pay to the plaintiffs the just compensation for the loss which they incurred by reason of the suspension and cancellation of their contract. The United States Shipping Board having refused to pay to the plaintiffs any compensation, the case is before us, and we must determine the just compensation due to the plaintiffs from the evidence in the record, and in so determining that compensation we have endeavored to give to the plaintiffs the sum of money which they lost by reason of such suspension and cancellation, and to place them in as good a position pecuniarily as if the contract had not been suspended or canceled.

We have not allowed the item of $5,889.35, for the reason that the plaintiffs used the material in the transportation of the cargo of wheat, and it does not appear just what the plaintiffs lost by reason of the change made in the vessel. We can not base a judgment upon guess work. We have not allowed the item of $15,080 because, while the plaintiffs were delayed thirty days, yet they were relieved from performing their ore contract, and all the expenses incident thereto; and the plaintiffs being thus relieved can not claim the damages for delay and take advantage of the relief which they obtained by reason of not having to perform their contract to go to New Caledonia for the ore.

The Government took no evidence in this case, and the facts are undisputed.

We are of opinion that the plaintiffs are entitled to the sum set out in the conclusion of law, and judgment will be entered accordingly.

Moss, Judge; Booth, Judge; and Campbell, Chief Justice, concur. Graham, Judge, dissents.

23 VI. *History of further proceedings*

On March 14, 1927, the defendant filed a motion for additional findings of fact and for new trial.

On December 19, 1927, the court entered the following order on said motion:

VII. *Order overruling motion for new trial and entering amended judgment*

ORDER

It is ordered by the court this 19th day of December, 1927, that the defendant's motion for new trial and for additional findings be and the same is overruled.

It is further ordered that the conclusion of law be and the same is amended so as to read as follows:

"Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiffs are entitled to recover the sum of $113,216 with interest thereon at the rate of six per cent per annum from May 9, 1918, to date of judgment, amounting, principal and interest, to $178,503.89, together with interest on the principal sum of $113,216 at the rate of six per cent per annum from the date of judgment.

"It is therefore adjudged and ordered that the plaintiffs recover of and from the United States the sum of one hundred seventy-eight thousand, five hundred three dollars and eighty-nine cents ($178,503.89), together with interest at the rate of six per cent per annum on the principal sum of $113,216 from the date of judgment until paid."

The findings of fact otherwise and the opinion to stand.

24 [Clerk's certificate to foregoing transcript omitted in printing.]

[Indorsement on cover:] File No. 33259. Court of Claims. Term No. 807. The United States, petitioner, vs. Amos D. Carver, S. E. Turner, Clifford N. Carver, et al. Petition for writ of certiorari and exhibit thereto. Filed February 25th, 1928. File No. 33259.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 78

THE UNITED STATES, PETITIONER

vs.

AMOS D. CARVER, S. E. TURNER, CLIFFORD N. CARVER, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

Order allowing certiorari

Filed April 23, 1928

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.